

**Before the
Federal Communications Commission
Washington, D.C.**

In the Matter of)	
)	
Implementation of Section 224 of the Act;)	WC Docket No. 07-245
Amendment of the Commission's Rules and)	RM-11293
Policies Governing Pole Attachments)	RM-11303
)	
_____)	

REPLY COMMENTS OF PACIFIC LIGHTNET, INC.

Pacific LightNet, Inc. ("PLNI"), by its attorneys, hereby files these reply comment in response to the FCC's notice of proposed rulemaking in the above-referenced docket.¹

PLNI is a facilities-based competitive local exchange carrier offering voice and data services throughout the state of Hawaii. Throughout the course of building its fiber-optic network, PLNI has obtained pole and conduit access through agreements with state's only incumbent LEC and the largest electric utility. Even in a single state with only two predominant pole owners, PLNI has faced divergent rates, terms and conditions in its agreements and in the practical application of those agreements.

Over the past several years, PLNI has experienced many of the same frustrations expressed by other commentors in this proceeding, particularly Fibertech Networks, LLC, Kentucky Data Link, Inc., Time Warner Telecom Inc and One Communications Corp.² As further discussed herein, PLNI supports the detailed proposals outlined in the Fibertech/KDC Comments ("Fibertech Proposal") and the TWT/One/Comptel Comments.

¹ See *Implementation of Section 224 of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments*, Notice of Proposed Rulemaking, 21 FCC Rcd 20195 (2007) ("NPRM"), and DA 08-582, released March 14, 2008, extending the time in which to file reply comments.

² See Comments of Fibertech Networks, LLC and Kentucky Data Link, LLC filed March 7, 2008 ("Fibertech/KDC Comments") and Comments of Time Warner Telecom Inc., One Communications Corp. and Comptel filed March 7, 2008 ("TWT/One/Comptel Comments").

PLNI supports the “structural solution” advanced by Fibertech, namely, the appointment of a neutral third-party administrator to manage all parties’ requests to occupy existing poles and conduits. While such a solution may not be an immediate fix, we urge the Commission to consider moving toward such a model as a long-term, sustainable solution to the inherent anti-competitive opportunities presented by there being a small, entrenched group of pole owners vying for the same customers as competitive carriers who must necessarily rely on those existing support facilities to place fiber optic networks. Particularly in Hawaii, a state with admittedly eye-catching, but challenging, topography, it’s simply not feasible to build duplicate support facilities. Ensuring nondiscriminatory and reasonable access to existing support facilities may be the only way to foster facilities-based competition.

PLNI supports the Fibertech Proposal, which calls for the Commission to:

1. Adopt a rebuttable presumption to allow use of boxing or extension arms where such a technique would avoid the need for make-ready work and where facilities on the pole are accessible by ladder or bucket truck;
2. Establish shorter survey and make-ready time periods to reflect efficiencies produced by nondiscriminatory use of boxing and extension arms;
3. Where pole owners cannot meet applicable make-ready deadlines, allow the license applicant to either (a) hire utility-approved contractors directly or (b) use NESC-compliant temporary attachments;
4. Reaffirm by rule that attachers can install NESC-compliant drop lines to satisfy customer service orders without prior licensing or pole owner approval;
5. Require conduit owners to permit CLECs to conduct manhole surveys and record searches;
6. Cap conduit owners’ fees for searches and surveys at reasonable levels;
7. Require pole owners to provide detailed invoice support for their cost-based fees;
8. Permit CLECs to use utility-approved contractors to work in manholes without utility supervision;

9. Require ILECs to provide CLECs with reasonable access to building-entry conduit.

PLNI also supports the TWT/One/Comptel Comments which further refine the Fibertech proposal by adding that the FCC should:

1. Establish rules that regulate the timeframe for inspections and make-ready work, including a 30-day make-ready window for projects involving fewer than 500 poles;
2. Ensure that make-ready costs and other expenses charged by pole-owners are reasonable, applied in a non-discriminatory manner, and recover only actual costs;
3. Ensure that a new attacher whose attachment requires that incumbent attachers rearrange or transfer their facilities is only required to reimburse incumbents for expenses the incumbents would not have incurred but for the new attachment;
4. Ensure that the newest attacher does not bear the cost of correcting a pre-existing safety violation on a pole;
5. Require that pole owners pay for replacement costs when a pole becomes overburdened or relocated;
6. Reduce delays and costs associated with seeking access to jointly-owned poles;
7. Improve and streamline the contracting process;
8. Permit the use of third-party contractors approved by the pole-owner to perform make-ready work and facilities checks;
9. Establish a unified rate based on the current cable formula.

A common theme among all of these proposals is to more clearly define “nondiscriminatory” and “reasonable” to minimize the opportunity for anti-competitive behavior. For its part, PLNI has noticed a disturbing trend, over several years and several different corporate iterations of the incumbent LEC, that attachments go smoothly in “low-demand” areas where the ILEC has little interest in pursuing end-users, but in “high-demand” areas, attachment applications are riddled with delay, excessive costs and “can’t do” attitudes.

On a more positive note, and in support of the related proposals noted above, pole owners in Hawaii have generally permitted utility-approved contractors to perform various tasks, without incident. This should not come as a surprise, as the limited number of approved contractors have a vested interest in keeping the pole owner satisfied, and would be unlikely to take unnecessary risks with a new attacher and jeopardize a continuing relationship with the pole owner.

PLNI's field experience supports the urgent need for the proposals advocated above. On the issue of availability, PLNI recalls one incident where a visual inspection revealed ample empty conduits; PLNI placed a conduit occupancy request with the owner; thereafter, all but one duct (reserved for maintenance) was filled with cables by the owner—purportedly for previously planned use—and PLNI's request was denied. While this example may be ripe for legal action under even the relatively high-level standards of today, piecemeal litigation is too expensive and time-consuming to provide a meaningful solution in the context of support facilities – in most cases, network needs to be built within a predictable timeframe to satisfy pending customer orders—the industry is beyond the notion of “build it and they will come.” If conduit or pole space is immediately available under sound engineering practices, new attachers should have equal footing to gain access to it.

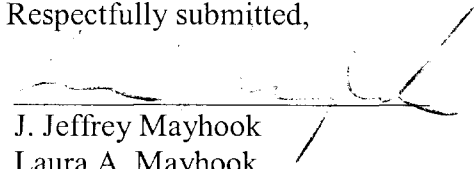
On the issue of cost, PLNI was recently charged over \$10,000 for engineering review fees by a pole owner, for work that was performed at the pole owner's request, involving moving an existing cable and correcting its existing position on 12 poles. In addition, PLNI bore the cost of the work in accordance with existing agreements. But for issues of limited time and space, PLNI could have placed its own new poles at a comparable price. Additional unnecessary and unreasonable costs are incurred where the pole owner forces the new attacher to correct existing defaults. These defaults may or may not rise to the level of a safety violation, but, no matter, it

causes the CLEC to bear costs for re-doing something that should have been done correctly the first time by the pole owner.

On the issue of time, pole and conduit owners routinely use technicalities to extend the time from the submittal of the attachment request to completion of make-ready. "No" is often the first response—thus re-starting the 45-day review period, even where further investigation later results in the application being granted with minor modifications or conditions. This practice is particularly troubling when one recognizes that the submission of an application—or even a preliminary request for records—alerts the incumbent that the CLEC is looking at serving a particular end user. By delaying the CLEC's ability to extend its network to the end-user, the incumbent LEC gains time to woo the end-user to its own services.

The goal of meaningful national rules should be to regulate availability, time and cost. If these three essential elements are protected, sustainable facilities-based competition should follow. Pacific LightNet commends the Commission for initiating this important inquiry into pole attachment practices and thanks the Commission for the opportunity to respond to the thoughtful comments already presented in this proceeding.

Respectfully submitted,



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